TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 195~~2~~ 4

~~No. 70~~

CHARLES AUGUSTUS DIXON, PETITIONER,

vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PRISON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED JANUARY 13, 1951.

CERTIORARI GRANTED MAY 28, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 79

CHARLES AUGUSTUS DIXON, PETITIONER,

vs.

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 11, 1951.

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Crim. No. 42454

In the Matter of the Application of CHARLES AUGUSTUS DIXON, In Propria Persona

PETITION FOR WRIT OF HABEAS CORPUS—Filed October 21, 1950

Your Petitioner respectfully states:

I.

That he is being illegally held imprisoned in the State Prison of San Quentin under the Director of Corrections and Warden Clinton T. Duffy, on a sentence from San Francisco County, City of San Francisco, State of California, for the violation of the California State Penal Code No. 480, to-wit 'Making or Possessing Counterfeit Dies or Plates', wherein he was illegally tried and sentenced, on or about April 8, 1949.

II

That Petitioner did forfeit his legal right to appeal as permitted by law, due to Petitioner's ignorance of the California State Law on Appeal. That Petitioner being unaware that he had only eleven days in which to file for appeal, did unknowingly lose said right to appeal. That Petitioner had not at that time, now at any time since, the funds necessary to order trial transcripts of Petitioner's trial by jury, thereby perfecting said appeal. That Petitioner did file a copy of this petition in the Marin County Superior Court, and was denied a hearing on or about the 27th day of July 1950. That Petitioner did then file a copy of this petition in the District Court of Appeal, and was [fol. 2] denied a hearing on or about the 12th day of September, 1950. That Petitioner is and indigent person, entirely without funds, and does respectfully request that this Honorable Court to order that he may proceed in this

matter in forma pauperis, and that copy transcripts of Petitioner's trial by jury be prepared for the use of the Petitioner and of this Court.

III

That on or about the 19th day of November, 1948, Petitioner was at his home at 881 Eddy Street, City of San Francisco, State of California, when the door bell rang. That when Petitioner did answer said door he was immediately accosted by two unknown men dressed in civilian clothing. That both said men, without the formality of identifying themselves, did with malice and aforethought, illegally and brutally force their way into Petitioner's home. That only after said brutal and illegal, forceful entry of Petitioner's home, did said unknown and unidentified men make known that said men were Officers of the law, namely one Lieutenant Dan. McKlem (phonetic spelling) and one Inspector Finley (phonetic spelling). That said Leiutenant McKlem attemtped to divert Petitioner's attention by questioning Petitioner, while aforementioned Inspector Finley, did surreptitiously and illegally proceed, without permission of Petitioner, or the legal search warrant as required by the Constitution of the State of California, Art. 1, sec. 19, to search Petitioner's home. That when Petitioner did [fol. 3] demand to be presented with a legal search warrant, as was his legal right as an American citizen residing in the United States of America, and as required by the Constitution of the United States, and the Constitution of the State of California, both aforementioned Officers did with malice and aforethought, brutally pounce upon, seize and pummel Petitioner. That aforementioned Inspector Finley did then stand over shackled Petitioner with a drawn firearm, namely one revolver, and orally issue further threats of violence at Petitioner, while aforementioned Lieutenant McKlem did willfully and illegally prowl through and search Petitioner's home. That one of the aforementioned Officers did then, without permission of Petitioner, or any legal authority, use Petitioner's personal and private telephone to call Officers of the United States Secret Service. That within the hour Officers of the United States Secret Service did arrive at Petitioner's home, to then be admitted by aforementioned Lieutenant McKelm. That said Lieutenant McKelm did then hold a secret conference with aforemen-

tioned Officers of the United States Secret Service, in another room from that in which Petitioner was being held. That the Officers of the United States Secret Service did then approach Petitioner, and inform Petitioner that they were Burns (phonetic spelling and Giovanetti (phonetic spelling), and that Petitioner was now under legal arrest of the United States Government. That Petitioner was to sign a waiver of his legal rights against unlawful search and seizure, that if Petitioner did not sign said waiver, one of [fol. 4] the Officers then present could leave and procure one within a very short time, and that it "would then go harder on Petitioner, and that Petitioner's wife would also be arrested and confined to a Prison as Petitioner's conspirator." That after said waiver had been signed other Officers were admitted to Petitioner's home, for the purpose of taking photographs and further searching of Petitioner's home. That Petitioner was then taken to the Offices of the United States Secret Service and further threatened with the imprisonment of Petitioner's wife, if Petitioner did not sign a declaration or confession implicating Petitioner in the felonious crimes of photographing United States Government obligations, and of making and possessing counterfeit plates of United States Government obligations. That Petitioner in actual physical pain and a state of mental confusion, and without being given the privilege of reading said declaration or confession, did sometime during the late afternoon of November 19, 1948 sign said declaration or confession. That Petitioner was then forced to pose in the Offices of the United States Secret Service, under simular threats mentioned above, before members of the leading newspapers of the City of San Francisco, State of California, with articles obtained illegally from Petitioner's home. That Petitioner was then taken to the San Francisco, City Jail, State of California and booked under the ambiguous charge of 'enroute to the United States Secret Service'. That Petitioner was held without any formal charge, benefit of bail or right to legal counsel until the [fol. 5] afternoon of November 22, 1948, at which time Petitioner was taken before United States, Commissioner Fox for a preliminary hearing. Petitioner did at that time, and upon the advice of Inspector Burns of the United States Secret Service, waive a preliminary hearing. That on or about December 1, 1948 a United States Federal Grand Jury

returned an indictment against Petitioner, charging Petitioner with the violation of Title 18 U. S. C., sec. 474 (photographing obligations of U. S.) and Title 18 U. S. C. sec 264 (making plates to print Government obligations without authority). That on or about January 6, 1949 the Honorable Judge Dal. M. Lemmon, District Judge of the United States District Court for the Northern District of California, did sustain a motion, made by Petitioner's Counsel, to suppress the illegally obtained evidence (U. S. v. Dixon No. 31783-H). That on or about January 24, 1949 the United States Attorney did file a written Nolle Prosequi, and Petitioner was ordered released from custody. That aforementioned Inspector Finley did appear at the County Jail, in the City of San Francisco, State of California, where Petitioner was at that time being held, at about (7) seven o'clock (the exact date is unknown) and order Petitioner's release. Petitioner after being released was shackled by the aforementioned Inspector Finley and taken to the City Jail, City of San Francisco, State of California, where he was re-booked and charged with the violation of the California State Penal Code No. 480 (making or possessing counterfeit dies or plates). That on or about February 3, 1949, Petitioner was indicted by a secret Grand Jury, which did base it's findings from the *illegally obtained evidence presented* by the District Attorney of the City of San Francisco, State of California, and obtained in some dubious and surreptitious manner for the United States Secret Service. That on or about February 24, 1949, Petitioner did stand before the Honorable Albert Wollenburg, (phonetic spelling). Judge of Dept. 6, Superior Court, in and for the City of San Francisco, State of California, and enter a plea of "Not Guilty" to the charge of violating the California State Penal Code No 480. Petitioner did at that time enter a formal admission to having had (2) two prior felony convictions. That Petitioner's Attorney did enter a motion, simular to the preceeding action in the United States District Court, to have the illegally obtained evidence suppressed, and did endeavor to show the Court, that *this was the same evidence*, that had been *ruled* upon in a preceeding collateral judicial proceeding is the said United States District Court. Petitioner's Attorney did stress that this was the *same* illegally obtained evidence, that had been *ordered returned* to Petitioner, and that this order had

never been complied with. Petitioner's Counsel did stress, that to use said evidence would effect a violation of Petitioner's Civil Rights, and would in reality be the effect of forcing Petitioner to testify against himself. That the Court did rule (in effect only), "that the preceeding ruling in Federal District Court, did not apply in the State Courts of California, and that the motion to suppress the evidence [fol. 7] was therefore denied." That on or about March 29, 1949, Petitioner was then subjected to an illegal, and prejudiced trial proceedings before a jury, in the aforementioned Superior Court. That on or about March 31, 1949 sometime in the late evening (the exact time is not known to Petitioner at this date), the aforementioned trial jury did return a verdict of "Guilty". That on or about April 8, 1949, Petitioner did stand before the aforementioned Judge Wollenburg, and recieve a sentence of from (1) one to (14) fourteen years in the California State Prison at San Quentin, California, where Petitioner is now being illegally restrained of his liberty.

IV

That the State of California had no legal jurisdiction to take Petitioner into a California State Trial Court for an alledged violation of *Federal Obligations*. That it is now and has been since 1789, an *expressed law*, that *only* the Congress of the United States can issue, make or effect Federal bank notes, and or currency. It has also, since the aforementioned date, been an expressed law that the Congress of the United States will punish violators of the aforementioned *Federal Obligations*. Petitioner respectfully wishes to emphasize, that this is not an *Implied Law*, or one that can or may be construed to serve an occasion, but an *Expressed Privilege*, given only to the Congress of the United States. Chapter 4 of the U. S. Code, Title 18, specifically lists the charge of counterfeiting Federal "Obligations" as (Offences against Operation of Government). Petitioner also respectfully wishes to cite that U. S. Code, [fol. 8] Title 18 (Criminal Code, sec. 147) entitled, Obligation Against Currency, Coinage, etc., specifically states:

> The word "Obligation or other security of the United States" shall be held to mean all bonds, certificates of indebtedness, national bank currency, coupons, United

States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, etc.

Petitioner does not believe that any State under the color of State authority, whether the motive be impersonal, or of a personal nature, can make, or enact, or enforce any legislative law, bill, or Penal Code, that will in any way stand in the way of, or conflict with, the United States Constitution. Petitioner does also believe that any State legislation, bill, or Penal Code conflicting with, or against the Constitution of the United States and the *Expressed* Laws of Congress, or impairing the full operation of their provisions, could not be legal legislation, bill, or Penal Code. Petitioner does believe that it is competent for a State to enact laws on a subject at a state prior to that which the Constitution and Federal laws have designated as the time at which they take cognizance of it, provided that such enact-[fol. 9] ments are not in-consistent with the end named in the Constitution of the United States. Petitioner respectfully submits that if this rule is applied, the Federal laws with relation to counterfeiting "Obligations" of the United States Government, have been completely ignored, and rendered wholly in-effective when Petitioner was indicted, tried, and sentenced for the Alleged violation of the California State Penal Code No. 480, and that this aforementioned indictment, trial, and subsequent sentencing of Petitioner to a California State Prison, did amount to a fraud on the person of the Petitioner, the Constitution of the United States, and the people thereof. To substantiate the above statements Petitioner wishes to submit the reasoning set forth in support herein below:

U. S. Constitution Amendment XIV.

No State shall make or enforce any law which shall abridge the immunities of citizens of the United States: . . .

California Constitution, Art. 1, sec. 3.

The State of California is an inseperable part of the

U. S. Constitution Amendment X; sec. 1.

> The powers not delegated to the United States by th Constitution, nor prohibited by it to the St tes, ar [fol. 10] reserved to the States respectfully or to th people.

Petitioner submits that his particular case is not the firs of it's kind to have been before a California State La Court, and Petitioner is also aware that it has been decide in certain previous trial courts, in the State of Californi that the California State Penal Code No. 480, as ambiguou as it has sometimes been construed, can and does cover vi lations of Government "Obligations". Petitioner doe respectfully stand in the fact of these previous decision and does contend, that if the Constitution of the Unite States is indeed the *supreme law* of the land, then the Cal fornia State Penal Code No. 480, could only be held to cove such violations that are in *direct* violation to the State c California, it's *controlled* securities, bank bills *issued* b banks, and *subject* to *their* control, and or of State issuance not *under direct control* of the Federal Government, an within the scope of State powers as *enumerated and define* by the Constitution of the United States. Petitioner has no been made aware of the fact that the Congress of the Unite States has at any given time, given the State of Californi or any of the other States, the privilege of taking judici proceedings in and for alleged violations of United State Government "Obligations".

U. S. Constitution, Art. IV, sec. 1:

> Full faith and credit shall be given in each State t [fol. 11] the public acts, records, and judicial proceed ings of every other State. And the Congress may b general laws prescribe the manner in which such act records, and proceedings shall be proved, and the effe thereof.

Petitioner is aware that public policy or belief ca play no actual part in defining, or construing the designe course of law. Petitioner respectfully wishes to subm that he is not basing his reasoning on the fact that ever public school in the United States of America teaches tha the Constitution of the United States is the *supreme la*

ments, by any and all of the States, but that Petitioner is basing his reasoning on the individual laws of the Constitution of the United States, it's Amendments, and their collaborate subordinate, the U. S. Code. Petitioner respectfully wishes to submit for the clarification, and the substantiation of his reasoning, a few of the many laws on the subject of Federal "Obligations". U. S. Constitution Art. 1, sec. 8., entitled—Powers Granted to Congress—, specifically states:

subsection 1.

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

subsection 6.

> [fol. 12] To provide for the punishment of counterfeiting the securities and current coin of the United States.

It is Petitioner's contention, based upon the laws of the Constitution of the United States, the Constitution of the State of California, and the United States Code, that the State of California did have no actual, or moral jurisdiction over Petitioner at any time during, or after his actual arrest. If Petitioner's contentions are held to merit, and if the Constitution of the United States, and the Constitution of the State of California are held to be valid, then this Honorable Court, can and will reverse the present illegal and unlawful judgment rendered in the aforementioned trial Court. Petitioner submits that there are numerous authorities on the subject of a conviction obtained by fraud, or one gained where there was no actual jurisdiction. Petitioner's intention is not to bore this Court by citing unnecessary, or superfluous information to this Honorable Court, therefore Petitioner respectfully submits only these two authorities on this subject.

Lapham v. Campbell, 61 C. 299
Hill v. City Cab Co., 79 C. 190

> "Where a judgment is obtained by fraud and where by reason of the fraud the court that rendered the judgment had not required jurisdiction of the person of the defendant, a court of equity will set aside such judgment without any question as to merit."

[fol. 13] Petitioner does submit, that, the State of California does contend, that, although the Constitution of the United States does specifically mention, and list among *it's personal* privileges, that of "to provide for the punishment of counterfeiting the securities and current coin of the United States," it does not prohibit any State from making a simular law, and enforcing same. Petitioner, on the other hand does contend that any law or privilege, specifically mentioned or listed (as a right of the Federal Government), in the Constitution of the United States, is an *Expressed Law,* and as such is an automatic bar to any State's jurisdiction, or subsequent prosecution.

U. S. Constitution, Art. 1 sec. 10, subsection 1:

> No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attain-er, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Petitioner respectfully cites from the Federal Law Book entitled "U.S. Code", the following facts which Petitioner does believe will prove his contention, that the Congress of the United States, the Federal Government, and the Constitution of the United States did intend to, and does reserve the exclusive right to make, issue, and protect it's [fol. 14] Government "Obligations". Under the herein below listed section of the U.S. Code, Title 31, the United States Government Does emphatically reserve the right to:

section 406:
to issue si-ver certificates
regulate denomination
retire or cancel
re-issue in substitution
section 407:
redeem fractional currency
section 413:
regulate whose portrait is placed on said currency
section 415
engrave and print said currency
section 416:
appoint officers, employees, and purchase machinery, and materials to make or print, said currency

section 417:
pay for issuance of said currency
section 418 and 419:
make provisions to manufacture and purchase materials necessary for producing the distinctive paper, for said [fol. 15] currency
section 420:
to replace the mutilated notes, etc.
section 421:
to destroy said notes, or currency
section 422:
how to destroy said currency
section 423:
to make provisions to launder said notes, or currency
section 424:
to mark counterfeit

Petitioner also respectfully submits that the Congress of the United States did go much further into this so important subject of jurisdiction over United States Government "Obligations". U. S. Code, Title 31, section 427; entitled "Rules and Regulations" reads as follows:

> "The Secretary of the Treasury shall make and issue from time to time such instructions and regulations to the several collectors, receivers, depositaries, officers, and others who may receive Treasury notes, United States notes, or other securities of the United States, or who may in any way be engaged or employed in the preparation and issue of the same, as he shall deem [fol. 16] best calculated to promote the public convenience and security, and to protect the United States, as well as individuals, from fraud and loss.
>
> (R.S. sec. 251)

Petitioner also does respectfully submit to this Honorable Court, that there are other rules and regulations listed under U. S. Code, Title 31, sec. 448a, and more emphatic and definate definitions are also listed under U. S. Code sec. 448b. Petitioner also re-pectfully submits that the U. S. Code, Title 31, sec. 146, entitled "Divisions of Issue and of Redemption", does most emphatically clear up the question of whether the State of California could at any time, and for any reason, take jusicial proceedings on any individual accused of "making or possissing counterfeit dies or

plates," of United States Government "Obligations". Petitioner does submit that the U. S. Code, Title 18. (U. S. Criminal Code) does make ample protection for United States "Obligations" in many of the sections therein listed. Petitioner does respectfully submit that in spite of these, and numerous other proofs not listed in this petition, of the State of California's overwhelming lack of discretion and jurisdiction in this matter, Petitioner is even now serving an illegal sentence in the California State Prison at San Quentin, California, where he does pray that this Honorable Court will grant him the succor he seeks.

V

[fol. 17] That Petitioner did not sign the aforementioned declaration or confession volumtarily. That said declaration or confession did play an important role in the aforementioned illegal trial Court, and or of Petitioner's subsequent conviction. That Petitioner had suffered an extremely severe physical beating shortly prior to the signing of said declaration or confession. That the aforementioned Inspector Finley, together with the aforementioned Lieutenant McKlem did willfully and maliciously pummel Petitioner repeatedly in the region of the solar plexus, and about the neck muscles behing the head. That the aforesaid pummeling did effect Petitioner to the extent that he could neither hold food on his stomach, nor breathe normally for at least two days. That Petitioner did suffer from continual headaches for approximately the same length of time. That the aforementioned Law Officers do deny beating Petitioner while Petitioner was alone in their custody, but that Exhibit A of Petitioner's application, will show that there was an admitted scuffle in Petitioner's home prior to the actual admission of the aforementioned Officers of the United States Secret Service. That Petitioner was threatened with the subsequent incarceration of Petitioner's wife, if Petitioner did not sign the aforementioned declaration or confession. The Officers do also deny this latter statement, and because they were Law Officers, and Petitioner was or had been convicted of two previous felonies, and because there were no witnesses to the aforementioned beating, or the persecuting tactics applied in gaining Petitioner's signature to the aforementioned dec-
[fol. 18] laration or confession, the aforementioned Law

Officers have been believed implicitly in all their denials of Petitioner's aforementioned charges concerning Petitioner's brutal treatment, both physical and mental. Petitioner respectfully request this Honorable Court to bear with Petitioner as he submits this reasoning. That Petitioner did *live alone with his wife* at the aforementioned address at 881 Eddy Street, City of San Francisco, State of California. That when Petitioner was taken into custody at his home on the morning of November 19, 1948, the *only other person* living at that apartment, was Petitioner's wife who was even at that time practicing her profession as a Registered Nurse at the Franklin Hospital, City of San Francisco, State of California, and that said Officers were aware that the aforesaid Franklin Hospital, was *less than a mile distant to Petitioner's home.* That the aforementioned Law Officers *had never met Petitioner's wife,* and that *in spite* of allegedly finding a private home fully equipped with apparatus allegedly being used in the commission of a felonious crime against the United States Government, the aforementioned Law Officers *did not even go to the trouble* of questioning Petitioner's wife. That Petitioner, with the aforementioned Officers of the United State Secret Service *permission,* was first to inform said Petitioner's wife that Petitioner had been arrested. That Petitioner's wife was informed of Petitioner's arrest by Petitioner by telephone, from the Offices of the United States Secret Service at approximately (2) two P.M. fully [fol. 19] (5) five hours after Petitioner's arrest. That Petitioner's wife did not meet any Officers of the Law, *until the following day* November 20, 1948; when Petitioner's wife did *voluntarily* go to the Offices of the United States Secret Service, and *voluntarily* make her statement. Petitioner does contend, and hereby state as he did in the aforementioned trial Court, that this was one of the prices paid Petitioner for signing said declaration or confession. Petitioner respectfully wishes to submit that a declaration or confession obtained under the abovementioned stipulations, could not and cannot be termed a legal, or voluntary declaration or confession.

Yarbrough v. Prudential Ins. Co. of America, 99 Fed. Rep. 874

> Declarations to be relevant as evidence must have been voluntary and free from studied design.

Petitioner respectfully states, and believes that Exhibit A will prove that Petitioner could not have signed said declaration or confession voluntarily. The Honorable Dal M. Lemmon, United States District Judge, in and for the Northern District of California, Southern Division, had this to state regarding Petitioner's aforementioned declaration or confession:

Exhibit A.

> "Its admissibility as evidence may be later determined at the trial or at a pre-trial conference. There may be circumstances bearing upon the admissibility which [fol. 20] were not presented at the hearing. Such circumstances may relate to the questions as to whether the delay in committing the petitioner was "unnecessary" and as to whether the confession was voluntary or involuntary. Bearing upon the problem generally attention is called to McNabb v. United States, 318 U.S. 332 and Upshaw v. United States, decided by the Supreme Court December 13, 1948."

Petitioner also wishes to call further attention to Exhibit A, where *some of the events* prior to the actual signing of the said declaration or confession are frankly stated by the abovementioned, Honorable Dal M. Lemmon, United States District Judge.

Exhibit A.

> "He had been overpowered, (the police officers admit that there was a scuffle following defendant's query about a search warrant) handcuffs had been placed upon him and a search had been made. There is present coercion, both physical and psychological. He knew that incriminating evidence had been found by the officers through the search. Those facts negative [fol. 21] the assertion that the consent was freely given. It is clear that coercion was still exerted when the consent was given. This and the hop-lessness of his position resulting from the violation of his rights motivated the consent."

Petitioner submits this reasoning to the above quotes from the Honorable Judge Lemmon's brief. If coercion could be found, from both a physical and psychological

aspect, *shortly prior to the actual signing* of the said declaration or confession, then it must be doubly apparant when Petitioner was forced to sign said declaration or confession. Petitioner respectfully cites the following authorities to further his contentions.

Sealy v. State, Pac. Rep. 87 2d 166

> "A statement or confession, to be admissible must be free and voluntary." . . . "A statement or confession, in order to be admissible must not be extracted by any sort of threat or violence, or obtained by any direct or implied promises, or by exertion or any improper influences."

Petitioner respectfully wishes to bring to the attention of this Honorable Court, that the motion to sup-ress said declaration or confession had been denied *without prejudice*, and was subject to further motion or attention, before actual trial, or pre-trial proceedings. To this Petitioner respectfully cites.

[fol. 22] The People v. Thomas J. Patton, 49 Cal. Rep. 632

> A "confession" recievable in evidence only after proof that it was made voluntarily, is restricted to an acknowledgment of the defenadnts guilt; and the word does not apply to a statement, made by the defendant, of facts which tend to establish his guilt.

Petitioner contends that it has been universally held that any declaration or confession obtained through or upon bribery, of any kind, is indeed an illegal document, and therefore cannot be used in any court of Law as evidence against the defendant.

The People v. Louis E. Borrie, 49 Cal. Rep. 342

> A confession of a crime made to one in authority, upon a promise to the accused that it will be better for him to make a full disclosure, is not admissable in evidence upon the trial of the accused, because it is not voluntary.

Petitioner does charge that the aforementioned Superior Court, did not attempt to qualify said declaration or confession. That said declaration or confession was used in connection with gaining the illegal conviction, and it's sub-

sequent illegal sentence, of which Petitioner is even now petitioning this Honorable Court for the succor he seeks.

VI

[fol. 23] That the previous judicial proceedings in the aforementioned United States Court, did in effect, *erect a bar* to further judicial proceedings on a *simular indictment*, for the same alleged crime, in another trial Court of *equal jurisdiction*, unless upon *direct order* of the trial Court of *prior jurisdiction*. Petitioner does submit this authority to substantiate his reasoning.

Ex Parte Henry Williams on Habeas Corpus, 116 Cal. Rep. 512

> Under sect. 1008 of the Penal Code the allowance of a demurrer to an information is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection may be avoided by a new indictment or information, directs the case to be submitted to another Grand Jury, or directs a new information to be filed; and where upon sustaining a demurrer to an information, the court merely sustains it, "with leave to the district attorney to file a new information," such permissive order is not equivalent to the direction of command contemplated by that section, the prosecution is at an end, and the prisoner cannot be held for a trial under a new information, and will be discharged from custody upon a habeas corpus.

[fol. 24] Petitioner contends that the District Attorney of the City of San Francisco, State of California was and is *guilty* of obstructing Justice, section 134 California Penal Code. Petitioner does also contend that the aforementioned District Attorney, together with the aforementioned Superior Court, are both guilty of *contempt of Court*. Petitioner offers this reasoning in substantiation thereof. It would be a cheap mockery to justice, and a direct insult to all of the Courts in the United States of America, and to the people of this Democracy who have placed their faith in the laws of our country and the Courts thereof, *if we are to believe* that the aforementioned District Attorney, together with the aforementioned Superior Court, *did unknowingly participate* in the prosecution of

a trial Court in which all the evidence (with the exception of the aforementioned declaration or confession) had previously been declared as illegally obtained evidence, and as such had been ordered *suppressed*, and *returned to the Petitioner*, by the United States Courts. That the said District Attorney, together with the aforementioned Superior Court, *were unaware*, that for *this reason* and *this reason alone*, the United States Attorney had filed a "Nolle Prosequi" in the Federal case, on or about January 24, 1949. Petitioner does believe that both the aforesaid District Attorney, and the aforementioned Superior Court, had *deliberate intentions* of participating in a fraud, as well as their having *full knowledge and comprehension* of being in *direct contempt* of the United States Courts, when they did order the aforementioned trial proceedings to [fol. 25] continue in the aforementioned Superior Court. Petitioner offers a few of the many citations and authorities on the subject of collateral, co-ordinate, and or concurrent jurisdiction.

Hayes v. Dayton, 20 Fed. Rep. 690

> One court does not reverse or review judgment of a court of co-ordinate jurisdiction.

Owens v. Ohio Cent. R. Co., 20 Fed. Rep. 10

> A court, having gained prior jurisdiction of a cause by reason of it's process, is not deprived of it's jurisdiction by reason of the actual seizure of the property in controversy by the officer of a court having concurrent jurisdiction.

Petitioner does contend that the United States Attorney, and the District Attorney of the City of San Francisco, together with the aforementioned Officers of the United States Secret Service, did conspire illegally against Petitioner, and that the aforesaid District Attorney of the City of San Francisco, together with the aforementioned Officers of the United States Secret Service did participate in the aforesaid illegal trial of Petitioner, and or with the complete sanction of the abovementioned Superior Court. Petitioner respectfully states that the California Supreme Court, (re: Crim. No. 5046, Kimler on Habeas Corpus, April 28, 1950) did decide this all import-

ant question of previous jurisdiction. Petitioner further states that the Superior Court of the City of San Fran- [fol. 26] cisco, State of California, could not have legally processed Petitioner through the aforesaid illegal trial proceedings, unless upon *direct orders* from the Court of prior jurisdiction. That *this was not a privilege* of the abovementioned United States Attorney, nor of the abovementioned District Attorney of the City of San Francisco, State of California. That *only upon the direct orders* from the aforementioned Honorable Dal M. Lemmon, District Judge of the United States Court, could the prior indictment be formally abandoned in the United States Court, and a re-indictment (on the same, or stem-ing from the same charges) drawn against Petitioner in the aforementioned Superior Court. Petitioner pleads that the laws of the United States, and the laws of the State of California were not properly adhered to, and Petitioner does further state that if the laws of the United States, and the laws of the State of California had been adhered to, Petitioner would not at this time be petitioning this Honorable Court for the succor he seeks.

VII

That aside from the above-listed infractions against Petitioner and the United States Courts, Petitioner does respectfully state that he was denied even the ordinary privilege of Due Process of Law, that is held to be the privilege of every unfortunate who stands before the bar of justice. Petitioner states, and as the trial transcripts will show, that on at least (2) two major counts, Due Process of Law was deliberately ignored, by both the aforementioned prosecuting Attorney, and the officials of the [fol. 27] aforementioned Superior Court.

1. That on or about February 24, 1949 Petitioner did enter a formal admission to having had (2) two prior convictions and or of constituting felony-s, of which Petitioner had been duely sentenced and incarcerated for. That this "formal admission" was entered at the same time and date that Petitioner did enter his plea of "Not Guilty" to the aforementioned charge of violating the California State Penal Code No. 480. That Petitioner did enter said "formal admission" of his prior felony con-

victions to avail himself of the protection afforded in the California State Penal Code No. 1025.

California Penal Code No. 1025

> In case the defendant pleads not guilty, and answers that he has suffered the previous conviction, the charge of the previous conviction must not be read to the jury, nor alluded to on trial.

Petitioner does submit that the prosecuting attorney, Mr. Thomas C. Lynch, (phonetic spelling) Chief Assistant Attorney, did many times remark and allude to Petitioner's prior convictions. Petitioner knows, as did the presiding Judge, that the aforementioned Mr. Lynch's remarks were not directed at the credibility of the defendant as a witness, but to prejudice the Jury against Petitioner as a habitual criminal. Petitioner further states that the aforementioned Mr. Lynch, not being satisfied with acting as the chief prosecutor in an illegal prosecution, nor content with deny- [fol. 28] ing Petitioner, Due Process of Law, did force Petitioner to read to the Jury and the Court passages regarding his aforementioned Prior Convictions. That the aforementioned Mr. Lynch, did have the aforementioned Mr. Burns of the United States Secret Service, allude to and read said passages of and or concerning Petitioner's prior convictions.

People v. Ford, 89 ACA 522, 526

> "Every defendant has the unquestioned right to a fair trial, conducted substantially in *o*ccordance with law. Prosecuting officers must learn that the doctrine which proclaims that the respect for the law cannot be inspired by withholding the protection of the law from the accused, is one which recognizes no exceptions. Whether guilty or innocent, the defendant was entitled to have his case fairly tried according to the established rules of law."

People v. Mohr, 157 Cal. 732, 735

> It is elementary that a defendant on trial for a specific offense may not be discredited in the minds of the Jury by evidence of specific acts in his past

life nor connected in any way with the matter under investigation, either offered in chief by the district attorney, or elicited under cross-examination.

[fol. 29] People v. Whiteman, 114 C. 338, 46 P 99

"It is not the policy of the law to allow proof of the bad character of a defendant accused of crime, as a step in the proof of guilt."

People v. Cook, 148, C 334, 340; 88 P 43

"The prosecution is not allowed under our law to attack the defendant's character by evidence of general repute, except in rebuttal of evidence on that point first introduced by him."

People v. Adams, 76 CA 178, 244 P 106

"Where the defendant made no attempt to prove he was of good character in respect to the traits involved in the charge, it was not allowable for the prosecution to prove his bad character, even if the evidence had related to such traits, it having no tendency to prove the commission of the crime."

People v. Buchanan, 119 CA 523, 6 P 2d 538

"The issue as to bad character can be raised only by the defense first introducing evidence of good reputation whereupon the prosecutor may meet such proof by evidence of bad reputation."

[fol. 30] Petitioner respectfully wishes to submit that on the herein above mentioned breach of Due Process of Law, the Chief Assistant District Attorney, the aforementioned Mr. Lynch, was guilty of gross and deliberate misconduct, the subject of which is a just cause for reversal by this Honorable Court.

2. That the abovementioned Mr. Thomas C. Lynch did deliberately and maliciously enter into the Superior Court's records, irrelevant and immaterial evidence, that did not, and could not have any bearing on the charges against the Petitioner. That the aforementioned Mr. Thomas C. Lynch did have said irrelevant and immaterial evidence introduced to the members of the Jury, sole-y for the

purpose of having said Jury overawed at the supposedly overwhelming amount of evidence. That the aforementioned Mr. Thomas C. Lynch did deliberately and maliciously prevaricate concerning evidence *that did have direct bearing* on Petitioner's actual conviction in the aforesaid Superior Court. That the aforementioned Mr. Thomas C. Lynch did deliberately and maliciously fabricate, and allude to evidence where none did exist. Petitioner does realize fully the magnitude of his charges; as herein listed above, but Petitioner does contend, and as the trial transcripts will prove (that if any discr-pancies exist in the above listed statements, they could only be where Petitioner has *under stated*, rather than *over stated* the facts). To further clarify the above charges Petitioner will list, and specify individually the aforementioned charges herein below.

[fol. 31] (a) That the aforementioned Mr. Thomas C. Lynch did enter into the aforementioned Superior Court, and present to the aforementioned trial Jury, such irrelevant and immaterial evidence as; receipts for pencils, ink pens, paper and other materials, all of which could not under the wildest stretch of anyone-s imagination be construed as materials used in counterfeiting; receipt for a driving license that Petitioner had previously procured in compliance with the California State Laws, governing the privilege of operating motor vehicles in the State of California, and which Petitioner does not believe could in any way be construed as evidence of the crime Petitioner was charged with; receipt for an electric phonograph, of which to the best of Petitioner's knowledge could have had no bearing on the case before the aforementioned Superior Court; receipts for miscellaneous publications, and of books, of which were in no way ever shown to have any connection with the alleged violation of the California State Penal Code No. 480.

(b) That the aforementioned Mr. Thomas C. Lynch [fol. 32] did deliberately prevaricate concerning evidence that *did have direct* bearing of Petitioner's eventual conviction. Said prevarication taken place over a piece of technical photographic equipment, did sway aforementioned trial Juries opinion against Petitioner. That in spite of Petitioner's Counsel object-

ing, and even though Petitioner himself did attempt to prove that the above stated photographic equipment, namely, a "printing frame", was actually a (4) four by (5) five inch "printing frame", the aforementioned Chief Assistant District Attorney, did insist to the contrary, and continually refer to same as a (5) five by (7) seven. It is Petitioner's belief that this Honorable Court, even as the aforementioned trial Jury, *being laymen in the photographic field*, might miss the significance of the aforementioned Mr. Thomas C. Lynch's deliberate prevarication. This "printing frame" was an Eastman Kodak product (stamped with the trade name and size, by the Company, on the reverse side) and as a (4) four by (5) could not, as the aforementioned Mr. Thomas C. Lynch deliberately [fol. 33] contended, the "printing frame" had been a (5) five by (7) seven, as was *all the other photographic equipment listed as evidence*, then there might have been some legal room for the aforementioned Chief Assistant District Attorney's conjecture, that this "printing frame" had been used in the making of counterfeit dies or plates.

(c) That the aforementioned Mr. Thomas C. Lynch did take an ordinary receipt of a bill Petitioner had recieved in payment of a legal debt, and with implicating gestures, as well as implying interrogation of Petitioner, actually fabricate evidence, and or implication of evidence, and implanting same in the minds of the aforementioned trial Jury. Petitioner contends that this receipt was printed on *pink paper*, or a *simular appearance* to that issued by the *traffic police* in and for the City of San Francisco, State of California. That on an evening months prior to Petitioner's arrest, (the actual date is unknown to Petitioner) he did place said receipt under the windshield wiper on the automobile of Mr. Clifton C. Leavitt, an acquaintance of [fol. 34] Petitioners. Petitioner has forgotten the exact legend he had written on this aforementioned receipt, but *in effect only*, it did read: Hi Cliff: bet I scared you, didn't I! Chuck. Petitioner did attempt upon the interrogation of the aforementioned Mr. Thomas C. Lynch, to show that Petitioner had attempted a practical joke on the aforementioned Mr.

Clifton C. Leavitt, by making it appear upon first glance that the aforementioned automobile had recieved a traffic violation ticket. The aforementioned trial transcripts, will show that the aforementioned Mr. Thomas C. Lynch did not at any time prior to the questioning of Petitioner, attempt any explanation for entering this evidence into the aforementioned trial Court, nor did he rectify this discrepancy at any later time. Petitioner also contends that the aforesaid trial transcripts *will not* show *why* the aforementioned Mr. Thomas C. Lynch *did ask* Petitioner to read the abovementioned *written legend* to the aforementioned trial Jury. Petitioner further contends that the aforementioned trial transcripts could not [fol. 35] show the officacious gestures accompanying the aforesaid Chief Assistant District Attorney's sneer of disbelief, nor could the aforementioned trial transcripts divulge the patronizing expressions of understanding displayed upon the faces of the aforementioned trial Jury. If as Petitioner contends, the aforementioned Mr. Thomas C. Lynch had no moral or legal reason for entering the abovementioned receipt in evidence, *other than in vain hope* that Petitioner's motives in writing the abovementioned legend on said receipt, *might not have been* of as innocent a nature as Petitioner's explanation proved it to be. Petitioner contends that no one connected with law enforcement, had ever querried Petitioner, in any way with the abovementioned receipt, prior to Petitioner taken the Witness stand, therefore Petitioner is at loss to explain the aforementioned Mr. Thomas C. Lynch's condescending expression to the members of the Jury. Petitioner does contend that the aforesaid members of the trial Jury had been made aware in many ways of Petitioner's previous felony convictions, and that [fol. 36] the aforementioned Mr. Thomas C. Lynch, himself a past master in the art of confusing a Jury, did resort to a psychological means to implant in the minds of an already receptive Jury the fabricated implication of evidence that never did exist.

Petitioner respectfully submits that the abovementioned infractions of Due Process of Law do also amount to misconduct on the part of the aforementioned Chief Assistant

Attorney, and that the aforementioned Mr. Thomas C. Lynch *was aware, as was* the aforementioned trial Court, that with the abovementioned methods *being sanctioned* by the abovementioned trial Court, the aforementioned trial Jury, could find no other verdict, than that of "Guilty". Petitioner respectfully submits that while the reviewing Courts are disinclined to reverse a judgment upon the grounds of misconduct of the District Attorney, such misconduct is ground for reversal when it is such as would naturally prejudice the Jurors against the defendant. And it cannot be said with certainty that such misconduct was the turning point in the case to secure a conviction. (People v. Derwoe, 155 Cal. 592) Petitioner repeats that the misconduct of the aforementioned Chief Assistant District Attorney in continually bringing Petitioner's prior convictions to the fore, using irrelevant and immaterial evidence, the fabrication of evidence, together with the de-
[fol. 37] liberate prevarications concerning other evidence, did constitute misconduct, and did turn the aforementioned trial Jury against Petitioner. Petitioner respectfully contends, and as Allen once wrote, "Neither the lawmaker nor the public has any assurance that laws which provide for a delegation of authority to other humans (sic) will be administered in the same spirit and with the same intent which motivated its enaction." But Petitioner does also contend that his trial by Jury was in the California Court of Law, ans as such was subject to the laws of the State of California, as well as the laws of the Constitution of the United States of America. Petitioner respectfully submits the following authorities in substantiation thereof:

People v. McKenzie, 12 CA (2) 614:

"Where the District Attorney refers to matters not in evidence or expresses his own conclusions not founded on evidence or where he indulges in unwarranted attacks upon the defendant . . . such conduct must be construed as reversible error."

People v. Wong Ah You, 67 Cal. 31:

"The court reversed the conviction because the verdict was based upon a false statement made in regard to a matter in no way connected with the crime of which he was accused."

[fol. 38] People v. Valerie, 127 Cal. 65:

"Rebukes seem to have little effect on district attorneys and little on juries. The only way to secure a fair trial is to set aside verdicts so procurred."

People v. Grider, 13 CA 703:

"The misconduct of the district attorney in asking improper questions and maintaining a general atmosphere of adverse comment, remark, and running argument throughout the trial showed that his presumed purpose was to prejudice the jury against the defendant and constituted grounds for reversal."

People v. Fleming, 166 Cal. 357:

"A trial court should take every precaution to prevent anything be which the jury may be overawed and their minds influenced by an atmosphere supercharged with hostility or partiality."

People v. Cowboy, 7 CA 501:

"The district attorney has no right to make any insinuations as to improper matters that he could prove if he were not afraid of error."

Petitioner respectfully submits, that in reversing a con-
[fol. 39] viction in the (People v. Ford, 89 ACA 522) in December, 1948 Presiding Justice Shinn rendered a far reaching decision on the question of misconduct of the prosecutor. Petitioner believes that the judgment against him should be reversed, and does pray that this Honorable Court grant him the succor he seeks.

VIII

Petitioner respectfully submits that while the Constitution of the United States, and the Constitution of the State of California, both do specifically protect the Peoples of the State of California, and the United States, to be secure in their homes from unreasonable searches and seizures, the Honorable Law Courts of the State of California do not uphold this, their sacred oath (People v. Mayen, 188 Cal. 237.) Petitioner does respectfully contend that the State of

California did act in direct violation to the constitution of the United States, the Constitution of the State of California, the laws as set forth in the United States Code, and the California Penal Code:

U. S. Constitution, Amendment IV, sec. 1:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

[fol. 40] Constitution of the State of California, Art. 1, sec. 9:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Skinner v. State, 87 Pac. Rep. (2) 341:

> "In order to justify the search of a person arrested and of his immediate surroundings, arrest must be made in good faith and not as excuse or subterfuge for purpose of making an unlawful search."

Petitioner respectfully acknowledges that authorities on the admissibility of evidence obtained illegally, are numerous, therefore known to this Honorable Court. Petitioner does not wish to attach the intelligence of this Court by citing superfluous citations, but does wish to emphasize the flagrant disregard shown the laws of the United States, and the laws of the State of California, by the aforementioned Dept. 6, Superior Court, in condoning the rude, wanton, aggravated manner, and the indication of malice with intent to injure, that was so apparent against Petitioner.

[fol. 41] U.S. Code, 287 (Criminal Code, sec. 173)

> The several judges of courts established under the laws of the United States and the United States commissioners may, upon proper oath, or affirmation, within their respective jurisdiction, issue a search warrant authorizing any marshal of the United States, or any other person specially mentioned in such warrant, to enter any house, store, building, boat, or other place named in such warrant, in which there shall appear probable cause for believing that the manufacture of counterfeit money, . . . etc.

Petitioner respectfully contends that both, the aforementioned Officers of the City of San Francisco, State of California, and the aforementioned Officers of the United States Secret Service, were guilty of breaking respectively, the laws of the California State Constitution, the laws as provided by the Constitution of the United States, the United States Code, and the Penal Code of the State of California, and as violators of the abovementioned legislatorials, were themselves subject to heavy fines, or jail sentences, and or both.

U.S. Code, Title 18, sec. 53a

> Any officer, agent, or employee of the United States engaged in the enforcement of any law of the United [fol. 42] States who shall search any private dwelling used and occupied as such dwelling without a warrant directing such search, or who, while engaged in such enforcement, shall without cause search any other building of property, shall be guilty of a misdemeanor and . . . etc.

U.S. Code, Title 18, sec. 51 (Criminal Code sec. 19)

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, . . . etc.

U.S. Code, Title 18 sec. 52 (Criminal Code sec. 20)

> Whoever, under color of any law, statu-e, ordinance, regulation, or custom, willfully subjects, or causes to be

subjected, any immunities secured or protected by the Constitution and the laws of the United States . . . . etc.

Petitioner respectfully submits that the California State Penal Code No. 1523, defines search warrants as follows:

California Penal Code No. 1523

[fol. 43] A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for . . . . etc.

Petitioner further contends that the aforementioned Officers of the City of San Francisco, State of California, and the aforementioned Officers of the United States Secret Service, were in direct violation of the Penal Codes, No. 1524, No. 1525, No. 1526, No. 1527, No. 1528, No. 1529, No. 1530, No. 1535, No. 1537, No. 1538, no. 1539, No. 1540 and No. 1541, of the State of California. Petitioner further states, that by taking personal property by trespassing (trespass de bonis asportatis) the aforementioned Officers did violate Petitioner's Constitutional rights, and as such Petitioner prays that this Honorable Court will reverse the illegal judgment and it's subsequent illegal sentence, thus granting Petitioner the succor he seeks.

IX

Petitioner respectfully contends that he was unjustly convicted in the aforementioned Dept. 6, Superior Court, because of the introduction of the aforementioned illegally obtained evidence in direct violation to Petitioner's Constitutional rights, and his Civil rights of self-incrimination. Petitioner respectfully states that the Honorable Dal M. Lemmon, District Judge of the United States Court, did rule and order, that the aforementioned evidence *had been illegally obtained*, and that *all the evidence* other than the written statement, the photographs taken by the Officers, [fol. 44] and the written consent, be delivered to the Petitioner.

Exhibit A

"The motion to supress the seized evidence, including the photographs is granted. The evidence other

than the written statement, the photographs taken by the officers and the written consent is ordered delivered to the defendant. The motion to supress the confession is denied without prejudice,"

Dated: January —, 1949.

Dal M. Lemmon, United States District Judge.

Petitioner respectfully contends that if the above-stated Judicial Order had been complied with, then Petitioner could not have been forced to use said evidence against himself. Petitioner further contends that the aforementioned District Attorney of the City of San Francisco, State of California, was aware of the above-stated Judicial Order, when he did *use* this evidence to obtain the aforesaid illegal indictment against Petitioner. Petitioner does further contend that both, the aforementioned Chief Assistant District Attorney, and the aforementioned Honorable Judge Albert Wollenburg, were aware of the above-mentioned Judicial Order, when Petitioner was subjected to the aforementioned illegal trial proceedings in the aforementioned Superior Court. Petitioner does contend that the [fol. 45] aforesaid Mr. Thomas C. Lynch in his burning desire for a conviction, did willfully and knowingly overlook the fact, that he, Mr. Thomas C. Lynch, was in effect, compelling Petitioner to testify against himself, when he, Mr. Thomas C. Lynch did enter evidence into the aforementioned Superior Court, that *had been ordered returned* to Petitioner. Petitioner further contends that we would be accusing the Superior Court itself, of crass ignorance and deplorable inexperience, or both, if we were to assume that *it did not know* the wholly improper and inexcusable nature of the aforementioned evidence. Petitioner submits that if the aforementioned Superior Court had intended giving Petitioner a fair and legal trial, then the aforementioned Superior Court, would have been bound by the reasoning found in (Kohn v. Superior Court, 12 Cal. App (2) 495) to the effect that in a proceeding collateral to the criminal trial, the Court must determine whether the evidence was illegally taken from the defendant, and if it was, then it should be returned to him. Petitioner states that the Federal Court found the evidence to have been illegally obtained, and *ordered it's return to him.* Petitioner further states that this was a determination in an action

which was collateral to the offense for which Petitioner was illegally tried, and illegally convicted. Petitioner contends that the evidence should have been returned to him. Petitioner further contends that if the aforementioned evidence had been returned to him, the State of California could not have compelled Petitioner to use it against himself. Petitioner also contends that because the evidence was never [fol. 46] returned to him, *as ordered*, he was therefore, in effect deprived of his Rights against self-incrimination, and as such does pray that this Honorable Court will reverse the present illegal conviction, and grant Petitioner the succor he seeks.

Wherefore Petitioner Prays: That a. Writ of Habeas Corpus be issued to the said Warden commanding him to have your Petitioner in Court to recieve what there shall be your judgment in this matter, and wherein Petitioner prays that he be discharged from said imprisonment.

Charles Augustus Dixon, In Propria Persona S. Q.
No. A-11630.

Dated: October 19, 1950.

[fol. 47] EXHIBIT A

STATE OF CALIFORNIA,
County of Marin, ss:

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 31783 L

UNITED STATES OF AMERICA, Plaintiff,

v.

CHARLES AUGUSTUS DIXON, Defendant

ORDER

Defendant is charged with unlawful possession of two film photographis negatives of a Federal Reserve Note and the execution of three copper plates in the likeness of plates designed for the printing of Government obligations.

In the morning of Friday, November 19, 1948, two officers of the San Francisco Police Department called at the apartment occupied by the defendant. They had neither a warrant for defendant's arrest nor a warrant to search the apartment. After they rang the bell thereto, defendant opened the door. He claims that the officers forced their way into the apartment. This is denied by the officers. But whether defendant invited the officers in, as they claim, or forced entrance is of no great moment. They identified themselves to the defendant and stated that they desired to question him about a party by the name of Levitt. If defendant invited them in he did so in submission to authority rather than as an intelligent and voluntary waiver of [fol. 48] his right of protection from illegal arrest or unreasonable search and seizure. Johnson v. United States, 333 U.S. 10. After questioning defendant in the kitchen for several minutes one of the officers started looking around the apartment. Defendant asked him if he had a search warrant. Thereupon defendant was handcuffed by the officers, following which a thorough search of the premise appears to have been made by one of the officers. A phone call was then made to the federal secret service agents by one of the officers. Two secret service agents, Burns and Giovannetti, came to the apartment about a half hour later in response to this call. The police officers opened the door to the apartment and admitted the agents to the apartment. The federal officers likewise had no warrant to either arrest the defendant or the search the premises. After a conversation of a few minutes between the several officers, Burns went into the room where the defendant was seated, still handcuffed, and engaged him in a conversation during which Burns asked defendant whether the latter had any objection to the secret service agents making a search. Defendant stated that he had no such objection. Following this verbal consent Burns asked defendant to sign a writing, expressly giving to them the right to make the search. This the defendant signed. Defendant also told them where most of the articles which were later seized could be found. After the search was [fol. 49] completed defendant was taken to the office of the secret service and, after further questioning and in the mid-afternoon, signed a confession, implicating himself in the charges contained in the indictment. In the afternoon

of the following Monday, November 22nd, defendant was first taken before a committing magistrate.

Defendant claims, and the police officers deny, that he was roughly treated by the officers following his inquiry about a search warrant. He also says that Burns told him that he (Burns) could get a search warrant if he did not sign the consent and that Burns further stated that "it would go easier with me if I did sign." Burns disputes this. Defendant has been previously convicted of a felony. In the face of this conflict I conclude the version given by the officers shall prevail over that of the defendant.

Defendant has moved to suppress the evidence taken from the apartment, including photographs of objects taken therein, and the confession above mentioned.

Prior to the arrest and search there was no evidence that the defendant had committed a felony so as to constitute probable cause for arresting him without a warrant. Brinegar v United States, 165 F 2d 512. It may not be said that the arrest by the police officers followed the commission of a felony in their presence. Before the arrest the officers had merely a suspicion that the defendant was engaging in counterfeiting.

[fol. 50] The original arrest was illegal. The same must be said of the searnc made by police over defendant's objection. Johnson v. United States, 333 U. S. 10. When the agents appeared upon the scene they took charge from the on because the offense in which the prior search indicated the defendant was involved were federal offenses. Undoubtedly the federal agents were informed by the police officers prior the the former's conversation with defendant of the result of their investigation. The conclusion is compelled that the federal agents became associated in the illegal search and proceeded to avail themselves of all that had gone before, including the illegal arrest and facts developed in the illegal search. Evidence obtained by the police through a wrongful search must therefore be excluded. Garibino v United States, 275 U.S. 310; United States v Brookins, 76 F Supp 374, 273 U.S. 33.

But the government contends that the defendant waived his constitutional right when he have the oral and written consents. Whether he did waive this important right freely and unders-andingly depends upon the attending circumstances. He had been overpowered, (the police officers

admit that there was a scuffle following defendant's query about a search warrant) handcuffs had been placed upon him and a search had been made. There is present coercion, both physical and psychological, He knew that incriminating evidence had been found by the officers through the [fol. 51] search. These facts negative the assertion that the consent was freely given. It is clear that coercion was still exerted when the consent was given. This and the hopelessness of his position resulting from the violation of his rights motivated the consent. A consent given under such circumstances is not the consent which the law requires to be present. A forced consent is no consent. United States v Baldocci, 42 Fed 2d 507.

It must be borne in mind that the Supreme Court has cautioned both federal officers and trial courts that a search without a warrant can be had only in exceptional circumstances. Prior to Trupiano v United States, 334 U.S. 699, it was understood that an arrest and seizure were proper when a felony is committed in the officer's view and presence. As a result of that decision a warrant may still be necessary if the delay attending the procurement of a warrant is not expected to frustrate apprehension of the wrongdoer. The protection afforded by the Fourth Amendment requires that the inferences from evidence found by officers be drawn by a neutral and detached magictrate and not by the officers. Johnson v. United States, supra.

The photographs are not property of the defendant taken during the search any more than are the mental impressions of the officers of the objects they saw or the other recordings which they may have made. The suppression of the photography as evidence fully protects defendant.

[fol. 52] So also the w-itten confession is not property illegally seized subject to return. Its admissibility as evidence may be later determined either at the trial or at a pre-trial conference. There may be circumstances bearing upon the admissibililty which were not resented at the hearing. Such circumstances may relate to the questions as to whether the delay in committing the petitioner was "unnecessary" and as to whether the confession was voluntary or involuntary. Bearing upon the problem generally attention is called to McNabb v. United States, 318 U. S. 332 and Upshaw v. United States, decided by the Supreme Court December 13, 1948.

The motion to sup-ress the seized evidence, including the photographs is granted. The evidence other than the written statement, the photographs taken by the officers and the written consent is ordered delivered to the defendant. The motion to suppress the confession is denied without prejudice.

Dated: January 1949.

Dal M. Lemmon, United States District Judge.

I, Charles Augustus Dixon, the before mentioned Petitioner do swear that the above sworn statement is a true copy of the photographic written opinion of the Honorable Dal M. Lemmon, United States District Judge, as I did receive it from the Clerk of the United States District Court.

Charles Augustus Dixon, In Propria Persona. S. Q. No. A-11630.

Subscribed and sworn to before me this 19 day of October, 1950. John Douglas Short, Notary Public in and for the County of Marin, State of California. My commission expires Sept. 3, 1954. (Seal.)

[fol. 53] *Duly sworn to by Charles Augustus Dixon. Jurat omitted in printing.*

[fol. 54] Affidavit of Service omitted in printing.

[fol. 55] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

In re Dixon on Habeas Corpus

ORDER DENYING WRIT OF HABEAS CORPUS—Filed November 9, 1950

Crim. No. 5171

Petition for writ of habeas corpus Denied.
Carter, J. and Schauer, J. voting for issuance of a writ.

Shenk, Acting Chief Justice.

[File endorsement omitted.]

[fol. 56] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 328, Misc.

On petition for writ of Certiorari to the Supreme Court of the State of California.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 766.

May 28, 1951.